



Brugge

College of Europe
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Application of GBER

Regulation 651/2014

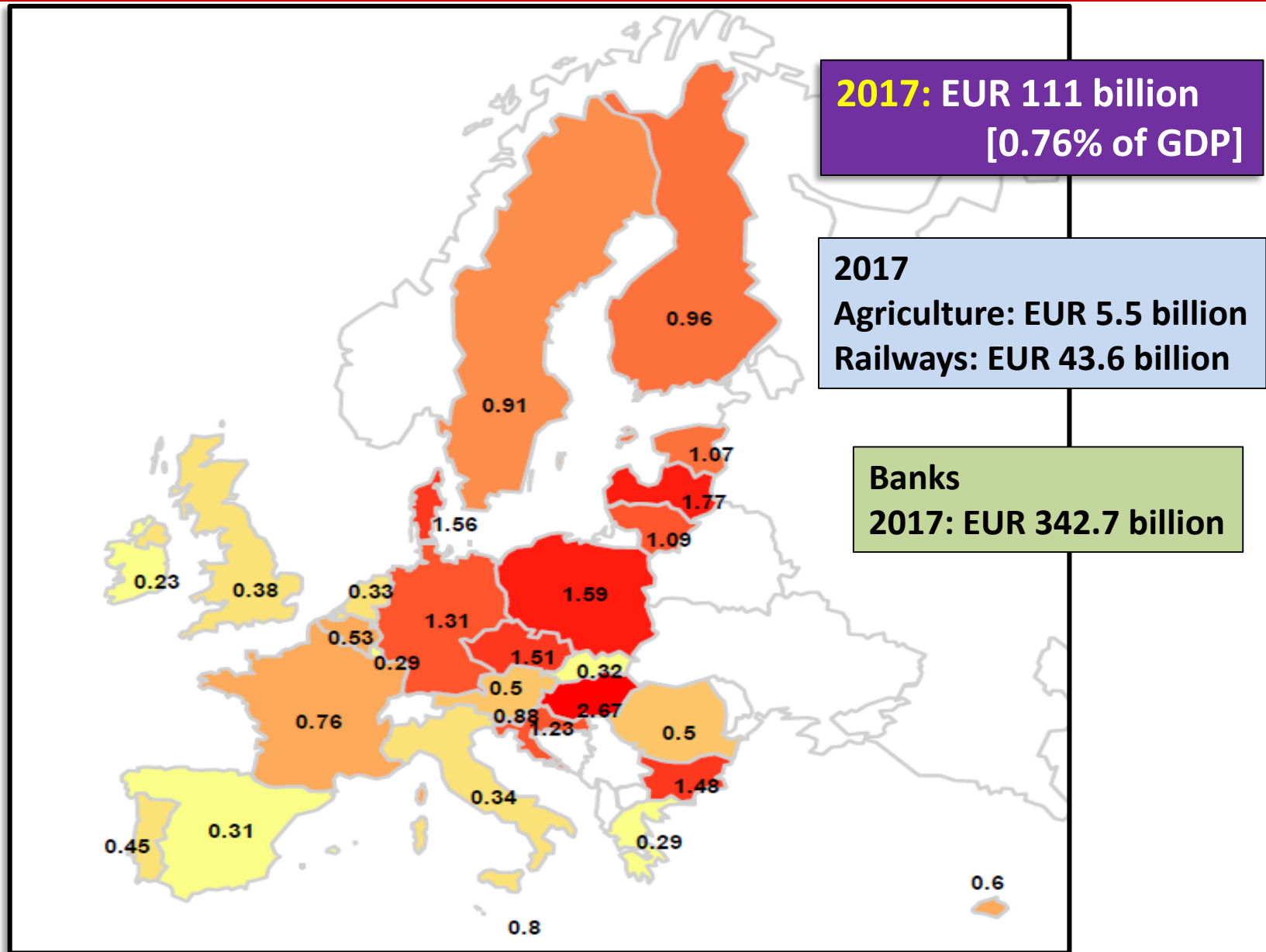
[OJ L187, 26/6/2014]

Amended by Regulation 2017/1084

[OJ L156, 20/6/2017]

Prof P. Nicolaides

State aid: Amount & as % of GDP [2017]



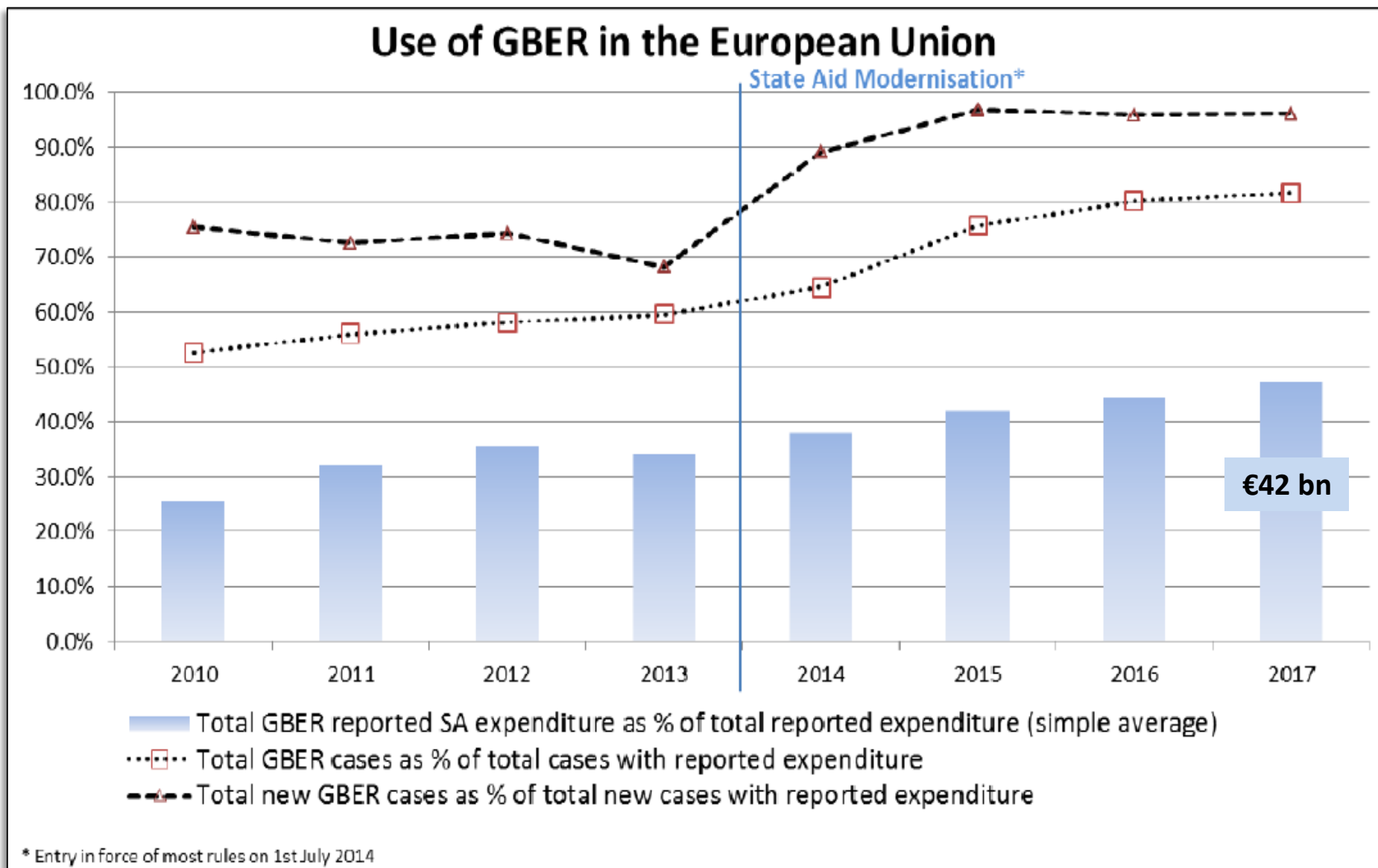
Aid objectives [euro, billion]

Objective	2016	2017
Energy & environmental aid	55.92	61.28
R&D&I	9.10	8.81
Regional aid	7.26	9.89
SMEs & risk capital	5.27	5.78
Culture	4.61	5.69
Employment	2.30	2.52
Training	0.48	0.53
Rescue & restructuring	0.13	0.25

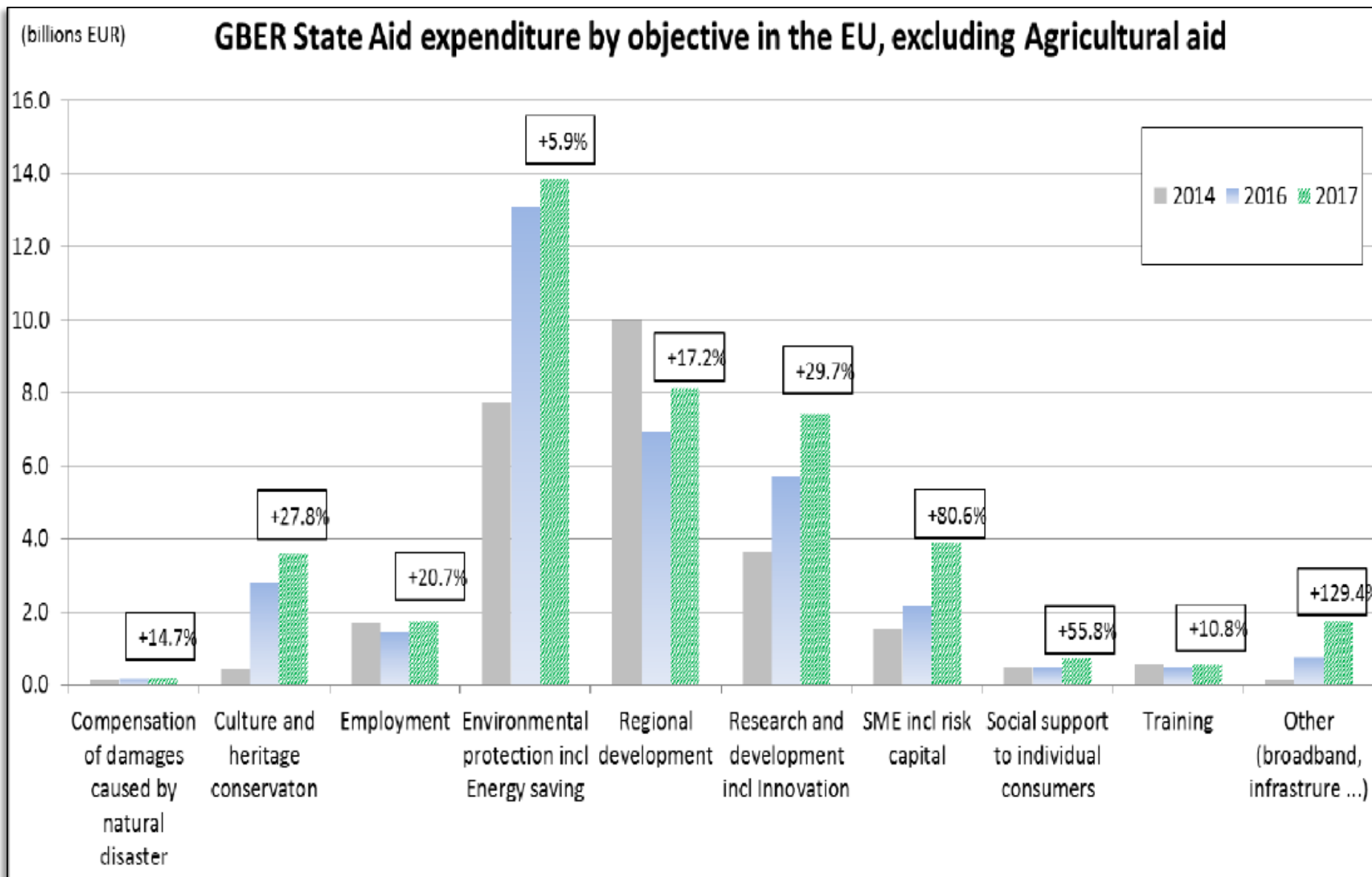
Amounts: Total & block exempted [euro, billion]

	Total	Block exempted
2017	110.69	41.75
2016	101.30	33.94
2015	94.62	29.15
2014	91.30	26.11

GBER: % of measures & % of aid



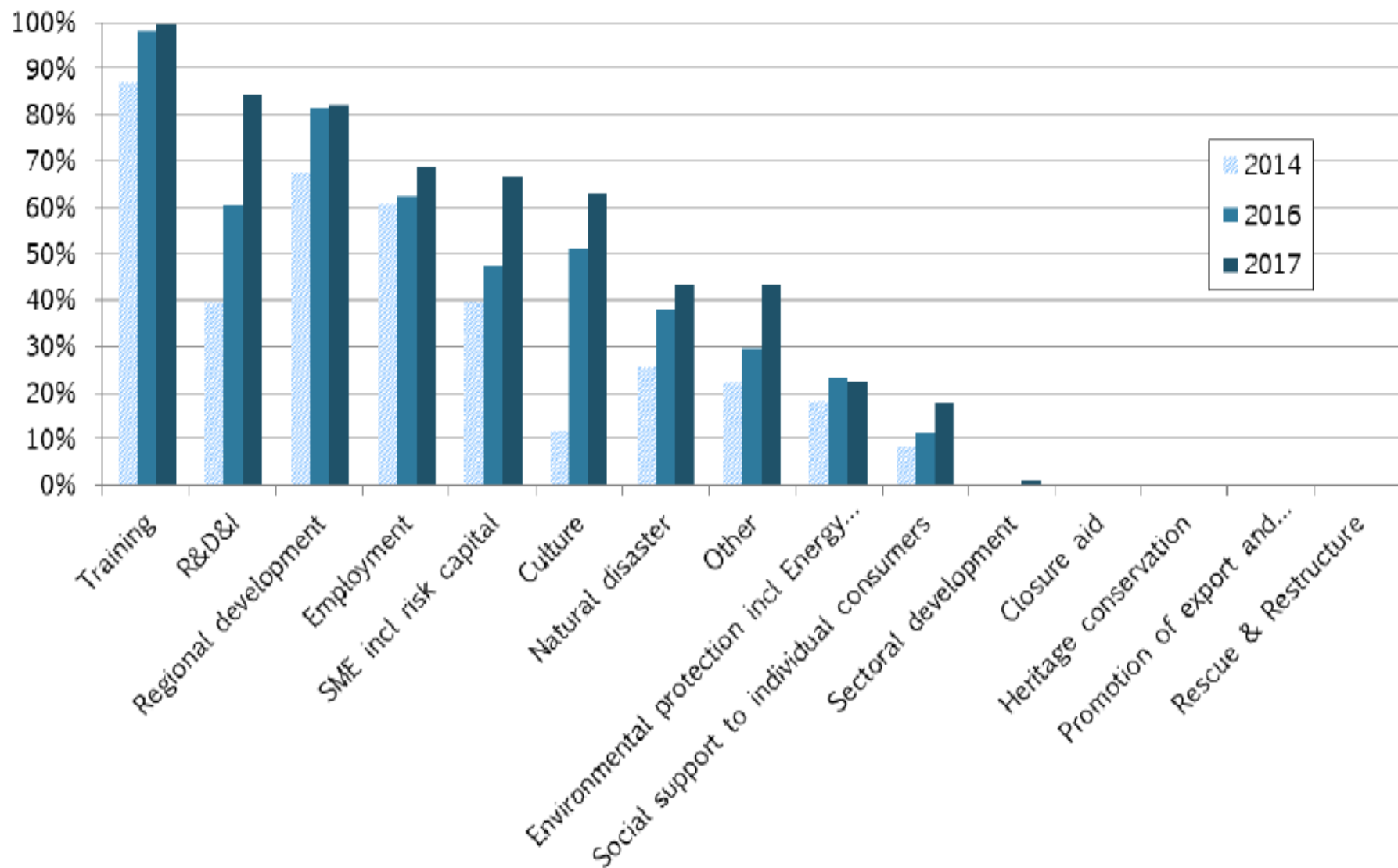
Share of spending per GBER objective



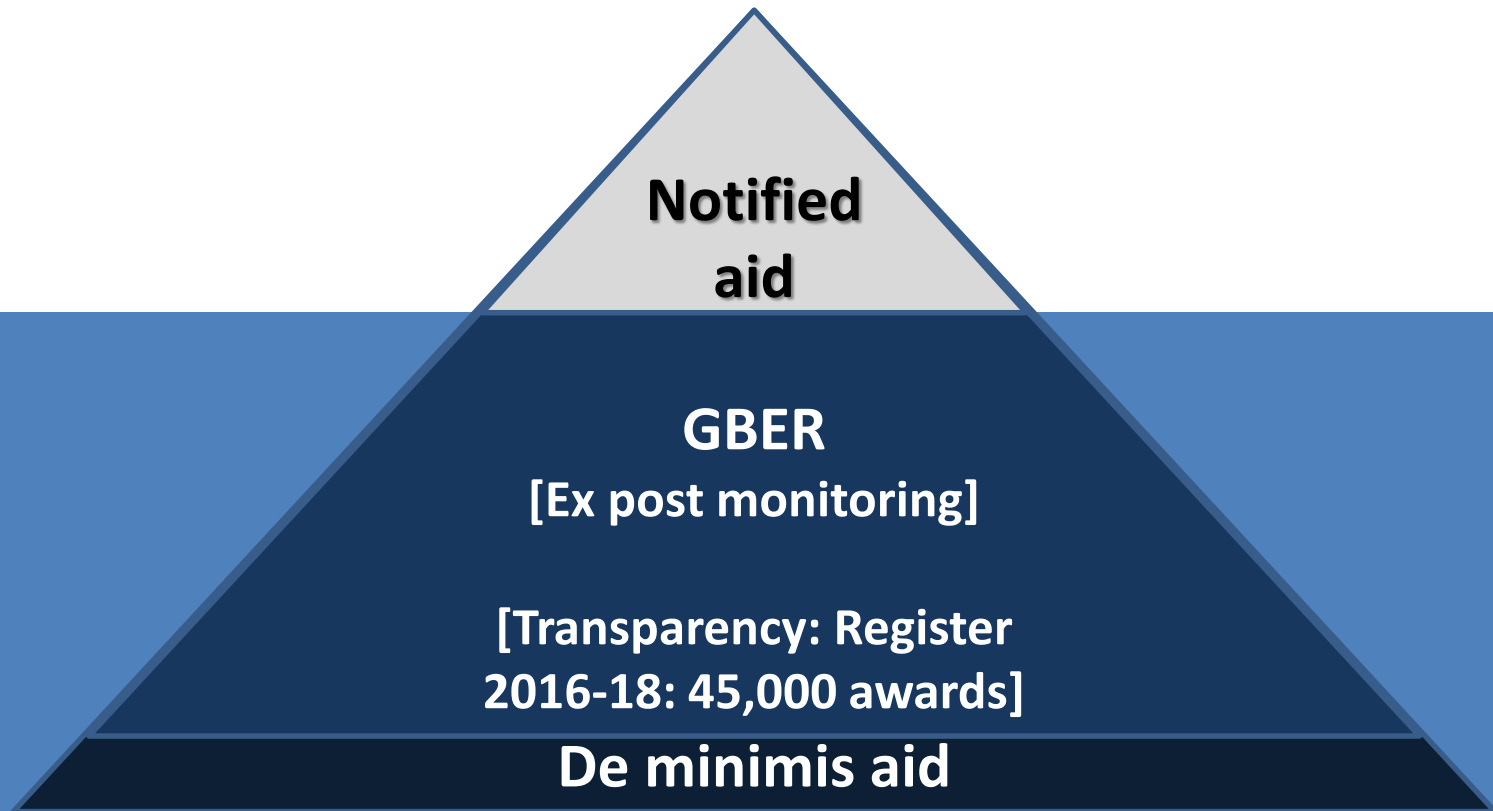
GBER: Amounts per objective [2014-2017]

Objective	EUR million	%
Regional aid [14]	12545	12.9
SME [17-20]	5017	5.1
Risk finance [21-22]	2280	2.3
R&D [25]	13503	13.8
Research infrastructure [26]	231	0.2
Innovation [27-30]	682	0.7
Training [31]	1101	1.1
Environmental investment [36-37]	1607	1.6
Energy efficiency [38]	834	0.9
Energy from RES [41]	1302	1.3
Reduction of environmental taxes [44]	31274	32.1
Broadband [52]	907	0.9
Culture & heritage conservation [53]	6711	6.9
Local infrastructure [56]	1344	1.4

Share of spending under GBER



Current system



Revision of rules

- Commission announces on **7 January 2019** prolongation and evaluation of current rules

- Prolongation until December 2022 of:
 - GBER, de minimis Regulation & Guidelines

- Evaluation of:
 - GBER, de minimis Regulation & Guidelines

The GBER at a glance

- State aid granted on basis of GBER is compatible with internal market
- Exempted from notification

Scope:

All sectors and types of aid

Exclusions:

Export, use of domestic products, firms in difficulty, violations of EU law, non-recovered aid

Non-application:

Agriculture, fisheries, mine closure
Measures with budget > €150 million [ex post evaluation]

Individual notification thresholds

Common provisions:

Transparency, incentive, cumulation, publication

Aid awards must comply with

All common provisions & relevant specific provisions

Specific provisions:

45 different categories [26 in previous GBER]

Purpose of GBER

- Relieves MS from notification requirement => reduces administrative burden & costs
- Covers almost all categories of aid [but not, e.g., agri, banks, R&R]
- But, ...
 - Many definitions [~ 200] => interpretation needed
 - New methods: e.g. tendering, claw-back
- And, it is directly applicable => enforceable by national courts
=> incentivises compliance

Scope: GBER applies to ... [new] [45 categories (26 in previous GBER)]

1. Regional aid
2. Aid for SMEs & SME access to finance
3. Aid for environmental protection
4. Aid for research and development and innovation
5. Training aid
6. Aid for disadvantaged workers & for workers with disabilities
7. Aid to remedy damage caused by certain natural disasters
8. Social aid for transport for residents of remote regions
9. Aid for broadband infrastructure
10. Aid for culture and heritage conservation
11. Aid for sport and multifunctional recreational infrastructure
12. Aid for local infrastructures
13. Aid for ports & regional airports

**2018: Commission proposal
for inclusion of EFSI projects**

Non-application & exclusions

- Schemes with average annual budget > € 150 mn [ex post eval.]
- Export-related activities
- Aid contingent upon use of domestic products
- Primary agriculture & fisheries
- Closure of coal mines
- Undertakings with outstanding recovery order
- Undertakings in difficulty
- Non-severable violation of EU law

For undertakings with multi-sector activities, account separation necessary

Except for natural disasters

For example,

- Discriminatory taxes to finance aid
- Local headquarters required
- Mandated use of local labour
- Limits on exploitation of R&D

Exempted aid

- Aid schemes, individual aid granted under aid schemes and ad hoc aid [also to LE] are compatible with IM and exempt from notification if they fulfil
 - Common provisions
 - And specific provisions for relevant category of aid
- Measure must include reference to GBER

Notification thresholds

- Regional investment: adjusted aid amount for € 100 mn
- Regional urban development: € 20 mn/project

- SME investment: € 7.5 mn/undertkng/project
- SME consultancy: € 2 mn/undertkng/project
- SME participation in fairs: € 2 mn/undertkng/project
- SMEs in ETC: € 2 mn/undertkng/project

- Risk finance: € 15 mn/undertkng (total)
- Start-ups: € 1-3 mn/undertkng

Cont.

- Fundamental research: € 40 mn/undertkng/project
- Industrial research: € 20 mn/undertkng/project
- Experimental development: € 15 mn/undertkng/project

- Feasibility studies for research activities: € 7.5 mn/study
- Investment in research infrastructure: € 20 mn

- Innovation clusters: € 7.5 mn/cluster
- Innovation aid for SMEs: € 5 mn/undertkng/project
- Process & organisatnl innovation: € 7.5 mn/undertkng/project

Cont.

- Training: € EUR 2 mn/project
- Disadvantaged workers: € EUR 5 mn/undertkng/year
- Workers with disabilities: € 10 mn/undertkng/year
- Environmental investment: € EUR 15 mn/undertkng/project
- Energy efficiency: € 10 mn
- Operating aid for green electricity: € 15 mn/undertkng/project
- Remediation of contaminated sites & district heating: € 20 mn/undertkng/project
- Energy infrastructure: € 50 mn/undertkng/project

Cont.

- Broadband infrastructure: € 70 mn/project
- Culture & heritage conservation: € 150 (100) mn/project
- Operating aid for culture & heritage conservation: € 75 (50) mn/under/year
- Audio-visual works: € EUR 50 mn/year
- Sport & multifunctional infrastructure: € 30 (15) mn
- Operating aid for sport infrastructure: € 2 mn/infrastrct/year
- Local infrastructure: € 10 mn/project

Cont.

- Regional airports: aid intensities in Art 56a
- Maritime ports: € 130 mn/project
- Inland ports: € 40 mn/project

Common provisions

1. Aid must be transparent = GGE must be calculated
2. Aid must have incentive effect
3. Aid intensity & eligible costs
4. Cumulation rules
5. All aid measures and awards must be published on publicly accessible website

Publication & information

- MS must publish online [website managed by Commission]
 - Summary information sheet
 - Full text of each SA measure
 - Each individual aid award > € 500,000

2016-2018: 45,000 awards

Withdrawal of benefits, reporting & monitoring

- Withdrawal of benefits of GBER:
 - If MS does not comply with any of common or specific conditions, Commission may withdraw benefits of GBER with respect to type of aid, recipient or authority

- Reporting:
 - Summary information sheet within 20 working days
 - Annual report [be careful: Commission checks!]

- Monitoring:
 - Detailed records for 10 years
 - If requested, submission of info within 20 working days
 - Commission has intensified ex post monitoring

Formal requirements as important as substantive requirements

- C-493/14, Dilly's Wellnesshotel
- MS must comply both with the formal and substantive provisions
 - e.g. publication requirements, reference to GBER
- Failure cannot be remedied ex post
- Consequence: SA = illegal => actionable before national court

Cont.

- C-245/16, Nerea SpA v Regione Marche
- Nerea applied and received aid
- Then, it entered into financial difficulties
- Questions:
 - Was Nerea eligible? Yes
 - Had aid to be withdrawn? No
- Lesson: National courts involved in correct application of GBER

Cont.

- C-349/17, Eesti Pagar
- Eesti Pagar invests in production of bread
 - 28/8/08: Concludes contract
 - 24/10/08: Applies for state aid
 - 10/3/09: Aid of EUR 0.53 million granted
 - 22/1/13: Granting authority finds aid was illegally granted
- Eesti Pagar argues it could break contract at little cost
- Q1: Is there incentive effect?
 - Contract conditional on obtaining aid is not legally binding commitment
 - Economic considerations of breaking contract are irrelevant
 - Necessity of aid can be established on criteria other than prior application [see also C-630/11P, Sardinia hotels]

Cont.

- Q2: Must granting authority recover aid?
 - Aid falling outside GBER is illegal
 - Direct effect of Art 108(3) is binding not only on national courts but on all public authorities
 - Granting authority must recover illegal aid, including aid co-funded by EU SF
- Q3: Does granting authority create legitimate expectations for recipient?
 - Only EU institutions can create legitimate expectations
 - Recipients cannot have legitimate expectations for aid not notified to Commission

Cont.

- Q4: What is limitation period when MS authority recovers aid granted through SF? [10 years, SF limit or MS limit?]
 - 10-year period applies to Commission
 - MS authority bound by limitation period in SF regulation or national law
 - Limitation period began on 10/3/09 and is interrupted by any action by granting authority
- Q5: What interest rate to be applied to aid recovered by MS authority?
 - The rate that would have been paid, had the aid recipient received a loan during period of illegality

... and, some typical problems

- Failure to prevent aid to firms in excluded sectors & to companies in difficulty
- False identification of eligible costs
- SME bonus to LE
- Absence of incentive effect; incorrect start of project
- Failure to publicise
- Lack of monitoring after aid is granted

ECA: Most common irregularities when ESI funds are used to grant SA

- Aid granted after project starts
- Aid granted to ineligible costs
- Aid granted in excess of max aid intensity

Plus some other failures:

Subsidy to infrastructure may be SA

Subsidies to non-profit organisations may be SA

Conclusions

- Wider GBER is very useful
 - Reduces notifications & administrative burden
 - Reduces need to carry out full market study on necessity and impact of aid
 - Reduces waiting time over wide range of aid measures
- But, there is more responsibility for MS, less legal certainty [growth of “comfort” letters]

- And, additional safeguards
 - Publication of individual awards [if aid > 500k]
 - Ex post evaluation [if budget > 150m]
 - MS subject to more extensive ex post monitoring